

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
LOUIS P. ALLBAUGH,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 108

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250.00 civil penalty for an alleged violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer), in the Board's conference room, Room 311, Insurance Building, Olympia, at 9:45 a.m., September 7, 1972.

Appellant and his wife, Shirley, appeared. Respondent appeared through its counsel, Keith D. McGoffin. Irene Dahlgren, court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were offered and

1 admitted.

2 On the basis of testimony heard and exhibits examined, the Pollution
3 Control Hearings Board prepared Proposed Findings of Fact, Conclusions
4 and Order which were submitted to the appellant and respondent on
5 November 13, 1972. No objections or exceptions to the Proposed
6 Findings, Conclusions and Order having been received, the Pollution
7 Control Hearings Board makes and enters the following:

8 FINDINGS OF FACT

9 I.

10 On February 11, 1972, at N.E. 72nd Street and 130th Avenue N.E.,
11 Kirkland, King County, a pile of land clearing debris, about 20 feet
12 square and at least six feet high, was ignited by appellant. Appellant
13 had no permits, either from the Kirkland Fire Department or the Puget
14 Sound Air Pollution Control Agency, for the fire. Notice of Violation
15 No. 5337 was issued by an inspector of the Puget Sound Air Pollution
16 Control Agency to appellant who was directed to scatter and extinguish
17 the fire.

18 II.

19 Smoke or steam continued to arise from the debris pile on
20 February 12 and 13, 1972.

21 III.

22 Appellant was under the impression that the fire was legal, having
23 read in a newspaper that the Washington State Legislature had approved
24 a measure liberalizing open burning regulations.

25 IV.

26 Testimony is in conflict as to whether appellant responded in

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 writing to respondent's demand for a statement of corrective action.
2 At any event, on March 22, 1972, respondent served Notice of Civil
3 Penalty No. 231 on appellant in the maximum allowable amount of \$250.00.

4 V.

5 Notice of Violation No. 5337 is the first such citation against
6 appellant on the records of respondent.

7 From these facts, the Pollution Control Hearings Board comes to
8 these

9 CONCLUSIONS

10 I.

11 Appellant was in violation of Section 9.02 of respondent's
12 Regulation I.

13 II.

14 In view of the disputed testimony concerning appellant's contention
15 that he did reply in writing to respondent's demand for a statement of
16 corrective action, and in view of the fact that Notice of Violation
17 No. 5337 is the first of record against appellant, we conclude that the
18 maximum allowable penalty of \$250.00 is excessive.

19 Therefore, the Pollution Control Hearings Board issues this

20 ORDER

21 Notice of Violation No. 5337 is sustained and the appeal therefrom
22 is denied, but Notice of Civil Penalty No. 231 is remanded to respondent
23 for the assessment of a lower amount more appropriate to the circumstances.

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27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 DONE at Olympia, Washington this 27th day of December, 1972

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 James T. Sheehy
6 JAMES T. SHEEHY, Member

7 Matthew W. Hill
8 MATTHEW W. HILL, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER